IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17352 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JASHIBEN W/O ASHWIN ALIAS KANAFULSING THAKOR

Versus

COMMISSIONER OF POLICE BARODA

Appearance:

1. Special Civil Application No. 17352 of 2003

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS MITA S PANCHAL AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 02/12/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that three prohibition offences were registered against him before Nawapura and Southern Division Police Stations between 07/07/02 and 15/11/03 for offences punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities.

3. On the strength of the aforesaid three registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order, and accordingly, the impugned order of detention was passed against the petitioner.

4. The petitioner has challenged the said order of his detention on several grounds. It has been contended here that the representation of the petitioner was not disposed of within a reasonable time, and therefore, the order of detention is not legal and valid. That, therefore, the order of detention deserves to be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, the learned AGP has drawn my attention to the affidavit of the detaining authority at page 20. The learned advocate for the petitioner has submitted communication received from the Government as well as from the detaining authority, they are taken on record.

7. The learned advocate for the petitioner has contended that the representation of the petitioner dated 08/12/03 was received by the detaining authority on 09/12/03 and on the same day itself it was forwarded to the Government. That, however, the said representation was decided by the Government on 22/12/03, and therefore, there was unexplained delay of about 13 days in disposal

of the representation of the petitioner.

8. On the other hand, the learned AGP has contended that the representation of the petitioner dated 08/12/03 was received by the office of the detaining authority on 09/12/03 and that it was forwarded to the Government on the same day and that it was received by the Government on 18/12/03. She contends that it is a postal delay.

9. Now, it is not possible to accept the above explanation rendered by the learned AGP. It shows that there was delay in the actual despatch of the aforesaid representation from the office of the detaining authority or there may be delay in the Government office and though the representation may have been received earlier, it may not have been noticed by the concerned staff working in the Government. It is not possible to accept that there would be a postal delay of nearly nine days. This shows that there was a delay in dealing with and deciding the representation of the petitioner. The delay is not ordinary and routine and it has not been explained. Therefore, unexplained inordinate delay would show that the representation of the petitioner was not disposed of within a reasonable time. The petitioner being a detenu has a constitutional right under Article 22(5) to submit an effective representation against his detention. The right to submit an effective representation is coupled with a right to get decision thereon within a reasonable time. Therefore, if the said right of getting decision within reasonable time has been denied, then the further continuance of the detention of the detenu cannot be justified in the eye of the law.

10. In the present case also, the representation of the Government has not been disposed of within reasonable time, and therefore, the detention cannot be justified in the eye of law. In that view of the matter, the petitioner is required to be released from detention. This can be done by quashing the impugned order of detention.

11. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 02/12/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Jashiben W/o Ashwin @ Kanafulsinh Thakor, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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